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APPENDIX

In The

Supreme Court of the United States

October Term, 1972

No. 72-397

Bonelli Cattle Company, a California corporation; County of Mohave, a political subdivision of the State of Arizona,

Petitioners,

—v.—

The State of Arizona, The State Land Department, a department of the State of Arizona; Andrew L. Bettwy, State Land Commissioner of the State of Arizona,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

PETITION FOR A WRIT OF CERTIORARI FILED SEPTEMBER 8, 1972
CERTIORARI GRANTED JANUARY 22, 1973

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APPENDIX

RELEVANT DOCKET ENTRIES

1. Complaint to Quiet Title filed April 16, 1962.
2. Agreed Statement of Facts and Issues, Order and Certificate (omitting map exhibits), filed January 23, 1964.
3. Judgment and Decree Quieting Title, filed July 17, 1967.
4. Notice of Appeal to the Arizona Supreme Court filed September 15, 1967, by State of Arizona, et al.
5. Order of the Arizona Supreme Court denying petition for direct appeal to it and transferring appeal to Court of Appeals, Division 1, filed October 24, 1967.
6. Opinion Court of Appeals State of Arizona, Division 1, filed February 16, 1970.
7. Motion for Rehearing filed March 3, 1970, by the State of Arizona et al.
8. Order of Court of Appeals denying request for oral argument and motion for rehearing filed April 20, 1970.
9. Petition for Review by the Supreme Court of Arizona filed April 23, 1970, by the State of Arizona et al.
10. Order of the Arizona Supreme Court denying Petition for Review, filed May 12, 1970.
11. Mandate of the Court of Appeals to the Superior Court of Mohave County, Arizona, filed May 15, 1970.
12. Motion for Reconsideration of Motion for Rehearing (Petition for Review) filed May 26, 1970, by State of Arizona et al.
13. Response to Motion for Reconsideration filed May 28, 1970.
14. Order of Arizona Supreme Court filed June 2, 1970, granting Motion for Reconsideration, denying request for oral argument and directing Court of Appeals to recall Mandate.
15. Order of Court of Appeals filed June 8, 1970, recalling Mandate.

16. Order of Arizona Supreme Court filed June 16, 1970, that Petition for Review is submitted.
17. Reference to Opinion of Arizona Supreme Court filed October 4, 1971, appearing as Appendix A, pages 1a through 36a, in Appendix to Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona.
18. Motion for Rehearing of Arizona Supreme Court's Opinion filed January 17, 1972, by Bonelli.
19. Order of Arizona Supreme Court filed January 25, 1972, granting all petitions filed asking for leave to file Amici Curiae Briefs relative to Motion for Rehearing.
20. Objection to Motion for Rehearing filed January 31, 1972, by State of Arizona et al.
21. Order denying Motion for Rehearing filed April 13, 1972.
22. Reference to Supplemental Opinion of Arizona Supreme Court filed April 13, 1972, appearing as Appendix B, pages 1b through 10b, in Appendix to Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona.
23. Mandate filed April 13, 1972 by the Arizona Supreme Court.
24. Order of the Supreme Court of the United States granting writ of certiorari, dated January 22, 1973.

In the Superior Court of the State of Arizona
in and for the County of Mohave

Civil Action No. 5631

BONELLI CATTLE COMPANY,
a California corporation, *plaintiff*,

v.

THE STATE OF ARIZONA; THE STATE LAND DEPARTMENT, a Department of the State of Arizona; OBED M. LASSEN, State Land Commissioner of the State of Arizona, *defendants*.

COMPLAINT TO QUIET TITLE

(Filed April 16, 1962)

Plaintiff for its cause of action against the defendants alleges:

I

(1) That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of California and is authorized to transact its corporate business within the State of Arizona.

(2) That defendant The State of Arizona is a body politic.

(3) That defendant The State Land Department is a Department of the State of Arizona and is empowered under law to administer all laws relating to lands owned by, belonging to and under the control of the State of Arizona. [1]

(4) That defendant Obed M. Lassen is the duly appointed, qualified and acting State Land Commissioner of the State of Arizona and as such is the executive officer of the State Land Department and empowered under law to exercise and perform all powers and duties vested in or imposed upon the State Land Department.

II

That the real property the subject of this action is situate in Mohave County, State of Arizona, and is described as follows:

Lot One (1); the South Half of the Northeast Quarter (S½NE¼) and the Southeast Quarter (SE¼) of Section Three (3), Township Nineteen (19) North, Range Twenty-two (22) West of the Gila and Salt River Base and Meridan.

III

That plaintiff is the owner in fee simple of the above-described lands as the ultimate successor in interest to the patentee of said real property by virtue of patent No. 160022 granted by the United States of America November 5, 1910, to Santa Fe Pacific Railroad Company, successor in interest to the Atlantic and Pacific Railroad Company. That said real property is particularly delineated on the Official Plat of Survey of Fractional Township 19 North, Range 22 West of the Gila and Salt River Meridian, Arizona, approved and filed in the Surveyor General's Office, Phoenix, Arizona, June 29, 1906, a copy of which is attached hereto, marked Exhibit A and by reference made a part hereof.[2]

IV

That during the past two years the United States Department of the Interior, through its Bureau of Reclamation, has, without the permission of plaintiff or its predecessors in interest, caused to be constructed through the above-described lands a rechannel of the Colorado River, a navigable stream.

V

That plaintiff is informed and believes and therefore alleges that the United States Department of the Interior

and its Bureau of Reclamation obtained permission from the State of Arizona by and though its State Land Department and the State Land Commissioner of Arizona to go upon said land and construct the new channel for the Colorado River, over across and upon said land. That plaintiff is therefore credibly informed and believes that notwithstanding the fact that it is the record owner of the whole fee title to said land that the defendants, and each of them, make some claim adverse to the aforesaid right, estate, title and interest of the plaintiff to said real property, which claim threatens to interfere with plaintiff's enjoyment of its fee simple estate in said real property unless an order and decree of this Court is obtained quieting title in plaintiff and barring defendants, and each of them, from forever having, asserting or claiming any right, title, estate or interest in or to said real property adverse to plaintiff.

Wherefore, plaintiff prays for an order and decree of this Court establishing and quieting title in and to the real property in plaintiff, free and clear of any claim of any right, estate, title or interest of the defendants, and each of them, [3] therein adverse to the plaintiff, and forever barring and estopping said defendants, and each of them, from having, asserting or claiming any right, title, estate or interest in or to said real property adverse to the claim, right and title of plaintiff; that plaintiff have and recover judgment for its costs herein expended and incurred; and for such other and further relief as to the Court may seem just and proper in the premises.

ELMER C. COKER
Elmer C. Coker
Suite 840 Security Building
Phoenix, Arizona
Attorney for Plaintiff [4]

(Verification omitted)

In the Superior Court of the State of Arizona
in and for the County of Mohave

(title omitted in printing)

AGREED STATEMENT OF FACTS AND ISSUES, ORDER AND CERTIFICATE

(Filed January 23, 1964)

Pursuant to Rule 52 (c) Rules of Civil Procedure, It is hereby stipulated by the respective attorneys for the plaintiff and defendants that the following are the Agreed Statement of Facts and the Issues to be determined by the Court:

I

Plaintiff claims to be the record owner in fee simple of:

> Lot 1; the S½NE¼ and the SE¼ of Section 3, Township 19 North, Range 22 West of the Gila and Salt River Base and Meridan.,

situate in Mohave County, State of Arizona, as evidenced by that certain warranty deed dated the 12th day of August, 1955, wherein Harry E. Miller and Orpha S. Miller, his wife, are grantors, and [1] plaintiff is the grantee, which warranty deed was placed of record in the office of the Mohave County Recorder on August 19, 1955, in Book 82 of Deeds, Pages 246-247, a true copy of which deed is attached hereto, made a part hereof and marked Exhibit A.

II

That during the years 1905 to 1906 the Surveyor General's Office of the United States Department of the Interior, under and by virtue of directions from the General Land Office and the Secretary of the Interior, caused to be made a survey of Fractional Township 19 North, Range 22 West of the Gila and Salt River Meridian, Arizona, among which lands so surveyed in said Township were Sections 2, 3, 4, 9 and 10, or portions

thereof, and established the meander line of the left bank of the Colorado River in the course of making said survey through said Sections 3, 4, 9 and 10. That the official map of said survey was approved and filed in the Surveyor General's Office, Phoenix, Arizona, June 29, 1906. That a true copy of said map showing the above-described lands in Section 3 is attached to plaintiff's complaint as Exhibit A and is likewise attached hereto as Exhibit B. That at the time of the filing said official map of said survey the lands above-described in Section 3 as shown on Exhibit B were located some distance from the meander line of the left bank of the Colorado River.

III

That pursuant to various Acts of Congress relating to granting land to aid in the construction of railroads the United States of America by Patent No. 160022 dated November 5, 1910, recorded July 3, 1911, in Book 21 of Deeds, pages 484-488, [2] records of Mohave County, gave and granted unto the Santa Fe Pacific Railroad Company, successor in interest to the Atlantic and Pacific Railroad Company, and to its successors and assigns forever, among other lands:

> Lots 1, 2, 3, 4, 5 and 6; the S½NE¼; the S½NW¼; the NE¼SW¼, and the SE¼ of Section 3, Township 19 North of Range 22 West, containing 589.40 acres;

the lands so described being all of Section 3, a true copy of which patent is attached hereto as Exhibit C. That the lands involved herein, described on Page .... of said patent, for easy identification, are underscored in red pencil.

IV

That pursuant to several reclamation withdrawal orders made by the President of the United States and the Secre-

tary of the Interior in the year 1903 and years subsequent thereto all of Section 2, as well as other lands, in said Township and Range were withdrawn from entry and disposition under the Public Land Laws, including the various grants to the then Territory of Arizona made by Acts of Congress. That said Section 2 still remains withdrawn from entry and the State of Arizona has never received title to the same under the provisions of its Enabling Act or any other Act of Congress, nor has the State of Arizona ever offered said Section 2, or any portion thereof, as lieu land for selection of other public lands pursuant to the Enbling Act, or any other Act of Congress. That if said lands were restored for entry by the United States, in the absence of any disposal of the land by lieu selection rights by the State of Arizona, title to said Section 2 would vest in the State of Arizona pursuant to the provisions of the Enabling Act and other Acts of Congress. That the [3] State of Arizona does not intend to offer said Section 2 as lieu land in exchange or selection for other lands of the United States under the provisions of the Enabling Act or any other Act of Congress applicable thereto. That if any accretion rights by virtue of the movement of the Colorado River have attached to Section 2, it is the intention of the State of Arizona to claim any of said accretion rights attaching or appurtenant thereto when and if the State should obtain title to said Section.

V

That during the late winter of 1959 and the early part of 1960 the United States of America, through its Bureau of Reclamation, without permission or consent from or by either plaintiff or any of the defendants, changed the channel of the Colorado River by relocating the same and rechannelling said River through the lands of plaintiff in Section 3 above described. That the location of the River

as it was so rechannelled by the Bureau of Reclamation is shown on the 1960 Mosaic Aerial Survey photo compiled July and August 1961 attached hereto as Exhibit D, and a topography map prepared by Region 3, Bureau of Reclamation, United States Department of the Interior, Boulder City, Nevada, Edition of 1952, Revised August 1, 1960, which indicates the bank of the active channel prior to rechannelization by the Bureau of Reclamation, United States Department of the Interior, indicated thereon by a red pencil line, a true copy of which topographic map, together with explanatory letter from the Regional Director of said Bureau of Reclamation dated January 31, 1964, is attached hereto as Exhibit E-1 and Exhibit E-2. That said topographical plat, however, has never been filed with the Bureau of Land Management, United States Department of the Interior, as an official plat of survey. [4]

VI

That pursuant to Chapter 36, Laws of 1959, ARS, Section 41-523, Twenty-fourth Legislature of the State of Arizona, and Chapter 118, Forty-ninth Session, Nevada Legislature, the Colorado River Boundary Commission of the State of Arizona and the Colorado River Boundary Commission of the State of Nevada under date of February 6, 1960, entered into a Compact defining a portion of the Arizona-Nevada boundary on the Colorado River from the center of the Colorado River as relocated and rechannelled by the Bureau of Reclamation. That a true copy of said Compact is attached hereto as Exhibit F. That attached to said Compact is a map made by the Boundary Commission's Registered Engineer which shows the location of the lands involved herein and the relocation of the Colorado River in relation thereto, the lands for easy identification being colored in red on the map. That said Compact

was approved and ratified by the Legislature of the State of Nevada and approved by its Governor March 9, 1960 (Chapter 119 Nevada Revised Statutes 1960) and was approved and ratified by the Legislature of the State of Arizona by Chapter 69, Laws of 1960, and approved by the Governor March 24, 1960 (which appears after the printed text of Section 41-523, ARS, 1963 Cumulative Pocket Part). That after ratification of the Compact by the States of Nevada and Arizona, Congress by Public Law 87-50, Eighty-seventh Congress, First Session (75 Stat. 93) approved June 16, 1961, ratified and confirmed said Compact.

VII

That during the month of December, 1961, the Bureau of Land Management of the United States Department of the Interior [5] caused to be made a Limited Dependent Resurvey of Sections 2 and 10 of said Township and Range for the purpose of retracing and reestablishing the boundaries of Sections 2 and 10 and to restore the corners thereof in their original positions according to the best available evidence. That the plat of this Limited Dependent Resurvey was approved October 12, 1962, and thereafter filed in the Phoenix Land Office, Bureau of Land Management, United States Department of the Interior, Phoenix, Arizona, a true copy of said plat being attached hereto as Exhibit G. That said survey and plat were made without the knowledge or consent of or participation by either plaintiff or defendants.

VIII

That since the years 1905 and 1906, and particularly since June 29, 1906, the date of the approval of the official map of survey, Exhibit B, until the river's rechannellization by the Bureau of Reclamation as stated in Paragraph V, the channel of the Colorado River has moved eastward

but the dates and degree of said movements cannot be ascertained with any degree of accuracy without the taking of voluminous testimony and documentary evidence, except, however, two aerial photographs are available which are attached hereto as Exhibits H and I, Exhibit H being an aerial dated April 24, 1938, showing the location and course of the Colorado River at that time, upon which the boundaries of Section 3 and adjoining sections have been scaled and Exhibit I being an aerial photo taken in 1942 showing the location and course of the Colorado River at that time upon which the boundaries of Section 3 together with adjoining sections have been scaled.

IX

That the only approved official plats of survey of record in the Phoenix Land Office, Bureau of Land Management, [6] United States Department of the Interior, Phoenix, Arizona, are those plats attached hereto as Exhibit B and Exhibit G.

ISSUES TO BE DETERMINED BY THE COURT

(1) Does the State of Arizona have any right, title, interest or claim to the lands in Section 3, Township 19 North, Range 22 West of the Gila and Salt River Meridian, Arizona, claimed to be owned by plaintiff in fee simple by virtue of the patent from the United States of America to Santa Fe Pacific Railroad Company, successor in interest to the Atlantic and Pacific Railroad Company, dated November 5, 1910, recorded July 3, 1911, in Book 21 of Deeds, pages 484-488, records of Mohave County, by virtue of any accretion rights which may now or in the future attach and become appurtenant to Section 2 by reason of the natural or manmade movement of the Colorado River?

(2) Does the State of Arizona own the lands in Section 3 claimed to be owned by plaintiff by reason of the fact

that the Colorado River is a navigable river by decision of the United States Supreme Court decided May 18, 1931, in *Arizona v. California*, 283 U. S. 423, 74 L. ed. 1154, and that as a result thereof under previous decisions of the Supreme Court of the United States the Territory and later the State of Arizona became the owner in fee simple from the high-water mark on the East bank of the Colorado River to the center thereof?

(3) If the answer to the foregoing question is in the affirmative, did the State of Arizona obtain title when the River moved eastward from its original location as shown on the official plat of survey approved June 29, 1906, Exhibit B, to its present location as shown on Exhibits B and G notwithstanding [7] the fact that prior to statehood, on November 5, 1910, the United States conveyed title to the lands in question to the Santa Fe Pacific Railroad Company (See Exhibit C)?

It Is Further Stipulated that the foregoing Statement of Facts and Issues to Be Determined by the Court, upon approval and certification by the Court, shall in the event of an appeal by either party to the Supreme Court of the State of Arizona from any final decision of the above-entitled Court constitute, together with the judgment, the record on appeal.

Dated: November 25, 1964.

/s/ Elmer C. Coker
Elmer C. Coker
Suite 840 Security Building
Phoenix, Arizona 85004
Attorney for Plaintiff

Robert W. Pickrell
The Attorney General
State House, Phoenix, Arizona
/s/ Dale R. Shumway
Assistant Attorney General

ORDER AND CERTIFICATE

It is hereby Ordered that the foregoing Statement of Facts are approved and certified to be correct;

It Is Further Ordered that the foregoing Issues are approved and certified to be the issues to be determined by this Court; and [8]

It Is Further Ordered that the foregoing Statement of Facts and Issues shall, in the event an appeal is taken from any final judgment of this Court to the Supreme Court of Arizona, be made a part of the record thereof.

Done in Open Court this 23rd day of January 1964.

T. J. MAHONEY
Judge of the Superior Court [9]

(Exhibit A, B and applicable parts of Exhibit C follows; Exhibits D, E-1 and E-2, F omitted.)

Exhibit A

WARRANTY DEED

The Grantors, HARRY E. MILLER and ORPHA S. MILLER, his wife, for and in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable considerations, receipt of which is hereby acknowledged, do hereby Convey unto Bonelli Cattle Company, a corporation organized and existing under the laws of the State of California, the following described real property, to-wit:

> S½ Section 1; E½ Section 3, excepting Lot 2 thereof; S½ Section 11; S½ Section 13; E½ Section 15, excepting therefrom the E½ of Lot B and all of Lots 1, 2, 8, 9, 10, 12, 13, 14, 15 and 16 as shown on plat of a Subdivision of said Section 15 filed in the Office of the County Recorder of Mohave County, Arizona, on May 18, 1931; E½, NE¼ NW¼, NW¼, SW¼ and SW¼ of Section 23, all in Township 19 North, Range 22 West, G&SRB&M, Mohave County, Arizona, together with the appurtenances thereto in anywise belonging or appertaining.

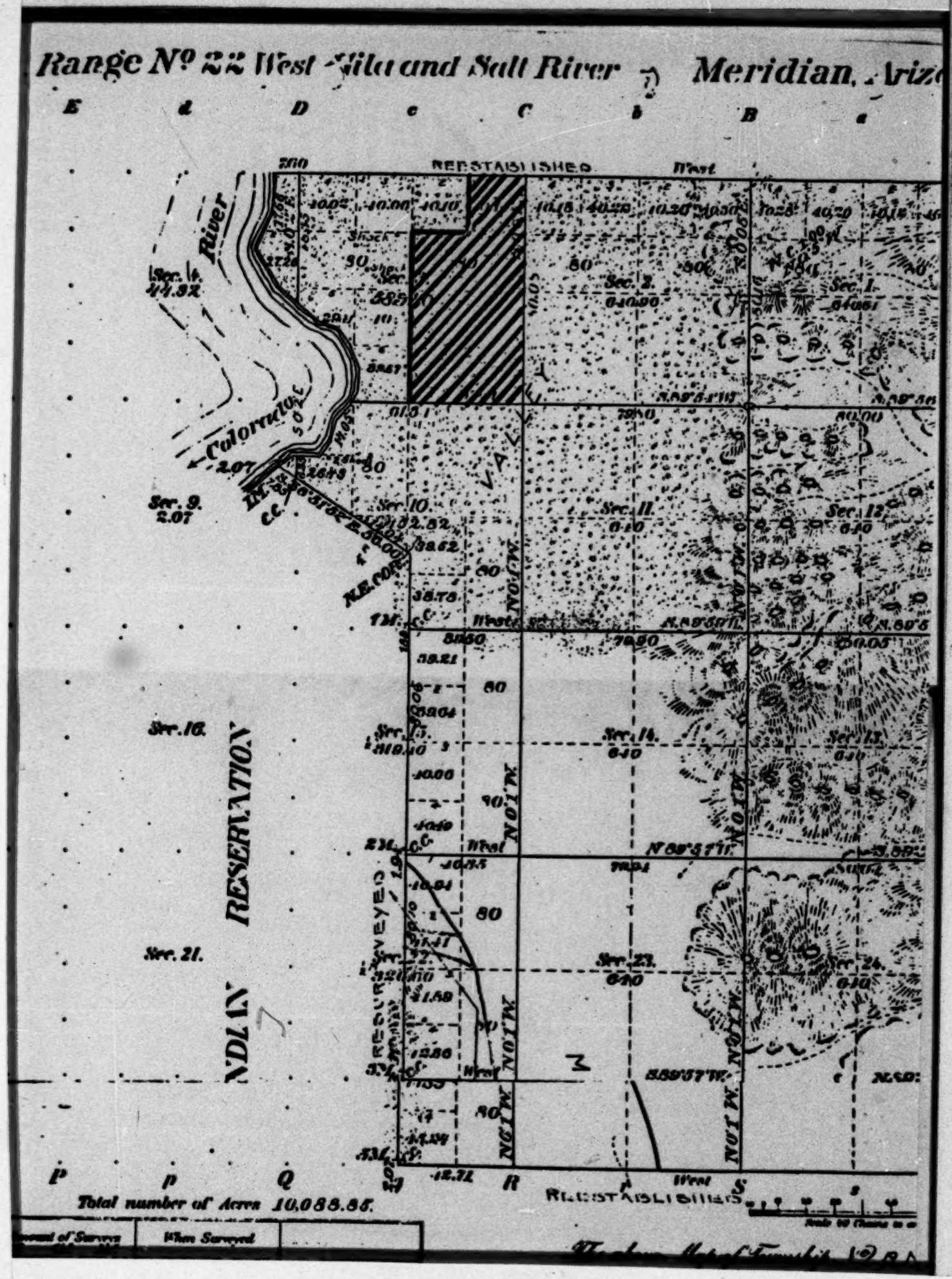
And we WARRANT the title against all persons whomsoever, subject to unpatented mining claims or locations covering all of or any portion of the property described herein or any loss which might occur due to mining operations thereon; also to roads and rights of way for roads, canals, laterals and ditches, reservations and exceptions of record, if any.

Witness the hands of said Grantors this-12-day of August, 1955.

/s/ HARRY E. MILLER
Harry E. Miller
/s/ ORPHA S. MILLER
Orpha S. Miller

(Acknowledgement Omitted)

(Recorded August 19, 1955, Book 82 of Deeds, pages 246-247, Records of Mohave County, Arizona.)


Range No 22 West Gila and Salt River Meridian, Ariz
E d D c C b B a
RE-ESTABLISHED
River
Colorado
Sec. 9.
Sec. 10.
Sec. 11.
Sec. 12
Sec. 16.
Sec. 14.
Sec. 13
Sec. 21.
Sec. 23.
Sec. 24.
RESERVATION
RESURVEYED
P p Q R S
Total number of Acres 10,088.85.
When Surveyed
RE-ESTABLISHED

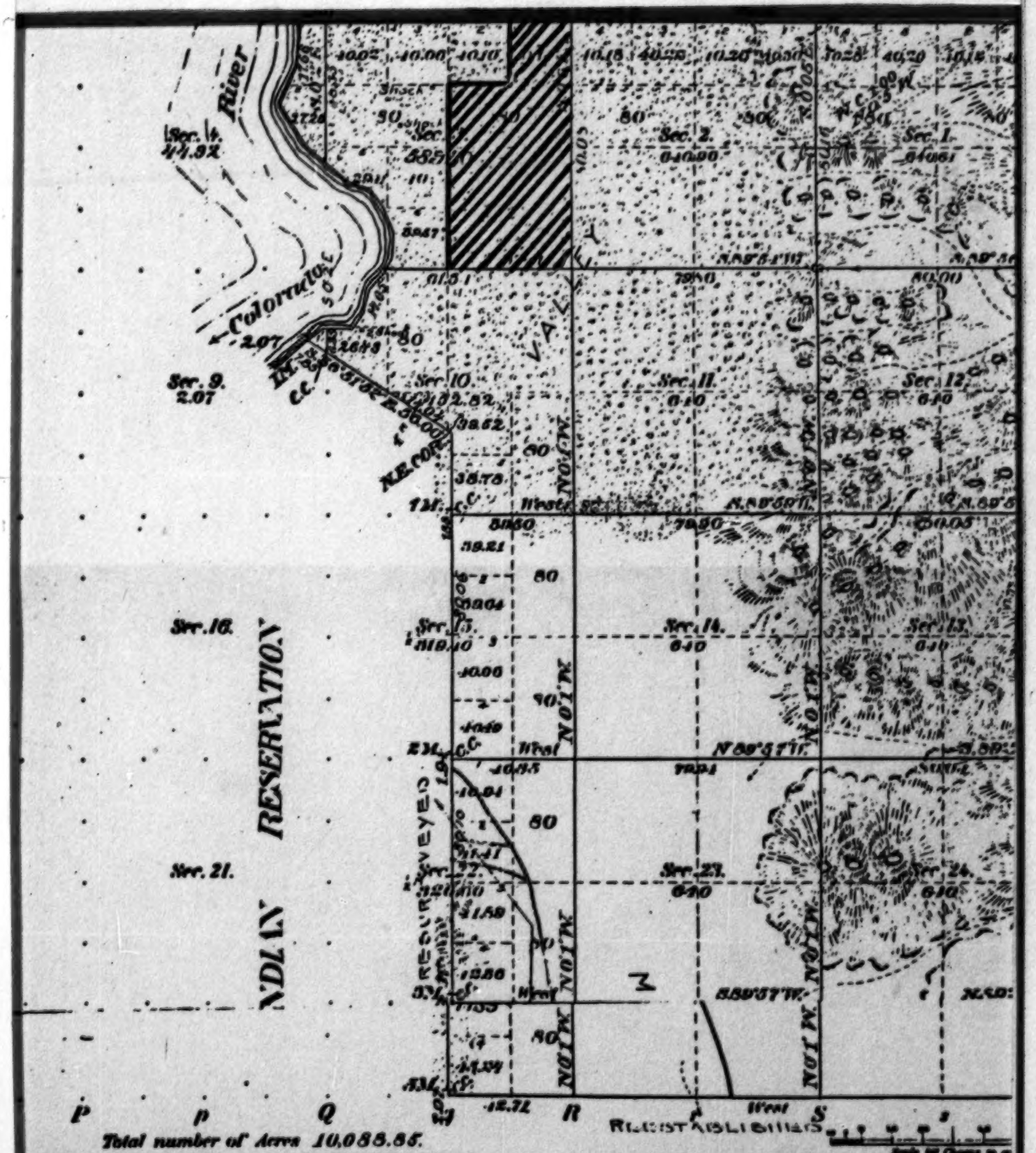

River
Colorado
Sec. 4.
44.92
Sec. 9.
2.07
Sec. 10
Sec. 11.
Sec. 12
Sec. 2.
Sec. 1.
Sec. 16.
Sec. 15.
Sec. 14.
Sec. 13
Sec. 21.
Sec. 22.
Sec. 24.
N.E.COR.
SALT RIVER MERIDIAN
RESERVED
RESERVATION
North
West
N.89°57'W.
S.89°57'W.
Total number of Acres 10,088.85.
EXHIBIT B
MAP, OFFICIAL SURVEY OF FRACTIONAL
TOWNSHIP 19 NORTH, RANGE 22 WEST
FILED JUNE 29, 1906
Amount of Surveys
When Surveyed
11 50 31
25 36 52
1 57 74
6 2 07
38 00
Dec 24, 1905 to
Surveyor General's Office.
Phoenix Ariz June 29 1906

Exhibit C

Patent No. 36

SANTA FE PACIFIC RAILROAD LANDS

Primary Limits

Phoenix Land District

Arizona.

4-1043

The United States of America,
to all to whom these presents shall come, greeting:

Whereas by the Act of Congress approved July 27, 1866, entitled "An Act granting land to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast," there was granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, "Every alternate section of public land, not mineral, designated by odd number, to the amount of twenty alternate sections per mile on each side of said railroad line, as said Company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof, the United States has full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the Office of the Commissioner of the General Land Office;" and [1]

Whereas, official statements bearing dates December 17, 1880, April 19, 1881, January 7, and December 16, 1882, and

November 3, 1883, have been filed in the General Land Office, showing that the commissioners appointed by the President, under the provisions of the fourth section of said Act of Congress approved July 27, 1866, have reported to him that the line of said railroad and telegraph from a point in Township Eight north of Range Two East, Territory of New Mexico, and ending at a point on the west bank of the Colorado River in the State of California, has been constructed and fully completed and equipped in the manner prescribed by the said Act of Congress; and

Whereas, certain tracts of land have been listed by the duly authorized land agent of the said Atlantic and Pacific Railroad Company as shown by his original list, approved by the local officers, and now on file in the General Land Office; and

Whereas, it is shown by evidence filed in the office of the Secretary of the Interior, that the Santa Fe Pacific Railroad Company, under a purchase at foreclosure sale of the property and rights of the Atlantic and Pacific Railroad Company, and by compliance with the provisions of the Act of Congress approved March 3, 1897,—29 Stat., 622—, became the lawful successor in interest of the said Atlantic and Pacific Railroad Company; and

Whereas, the said tracts of land lie coterminous with the constructed line of road, and are particularly described as follows, to wit:

Gila and Salt River Meridian—Arizona

* * * * *

Township Nineteen North of Range Twenty-Two West

* * * The lots one, two, three, four, five and six, the south half of the northeast quarter, the south half of the northwest quarter, the northeast quarter of the southwest quarter, and the southeast quarter of section three, containing five hundred eighty-nine and forty hundredths acres; * * *

Now know ye, that the United States of America, in consideration of the premises, and pursuant to the said Acts of Congress, has given and granted and by these presents does give and grant, unto the said Santa Fe Pacific Railroad Company succesor [2] in interest to the Atlantic and Pacific Railroad Company, and to it successors and assigns, the tracts of land listed as aforesaid and described in the foregoing; to have and to hold the said tracts, with the appurtenances thereof, unto the said Santa Fe Pacific Railroad Company, successor as aforesaid, and to its successors and assigns, forever.

In testimony whereof, I, William H. Taft President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the FIFTH day of NOVEMBER in the year of our Lord one thousand nine hundred and TEN and of the Independence of the United States the one hundred and thirty-fifth.

(GENERAL)
(LAND)
(OFFICE)
(SEAL)

By the President: Wm. H. Taft
By H. P. Le Roy, Secretary

John O'Connell
Acting Recorder of the General Land Office

RECORDED: Patent Number 160022

Filed and Recorded at request of Howel Jones July 3rd A.D. 1911 at 9 o'clock A.M. in Book 21 of Deeds, Pages 484 Et Seq, Records of Mohave County, Arizona Territory.

J. W. Morgan
County Recorder. [3]

In the Superior Court of the State of Arizona
In and for the County of Mohave

(title omitted in printing)

JUDGMENT AND DECREE QUIETING TITLE

(Filed July 17, 1967)

This cause having come on regularly for hearing on agreed statement of facts and issues pursuant to stipulation of the respective attorneys for plaintiff and defendants under Rule 52(c), Rules of Civil Procedure, dated January 20, 1964, and the matter having been submitted to the Court by briefs of the respective counsel and oral argument held thereon September 16, 1964, Elmer C. Coker, Esq., appearing for the plaintiff and Dale R. Shumway, Esq., Assistant Attorney General, appearing for the defendants, the Court, being fully advised in the premises, answers the following issues submitted to it for determination in the negative by reason of its findings hereinafter set forth:

(1) Does the State of Arizona have any right, title, interest or claim to the lands in Section 3, Township 19 North, Range 22 West of the Gila and Salt River Meridian, Arizona, claimed to be owned by plaintiff in fee simple by virtue of the patent from the United States of America to Santa Fe Pacific Railroad Company, successor in interest to the Atlantic and Pacific Railroad Company, dated November 5, 1910, [1] recorded July 3, 1911, in Book 21 of Deeds, pages 484-488, records of Mohave County by virtue of any accretion rights which may now or in the future attach and become appurtenant to Section 2 by reason of the natural or manmade movement of the Colorado River?

(2) Does the State of Arizona own the lands in Section 3 claimed to be owned by plaintiff by reason of the fact that the Colorado River is a navigable

river by decision of the United States Supreme Court decided May 18, 1931, in *Arizona v. California*, 283 U. S. 423, 74 L. ed. 1154, and that as a result thereof under previous decisions of the Supreme Court of the United States the Territory and later the State of Arizona became the owner in fee simple from the high-water mark on the East bank of the Colorado River to the center thereof?

and the Court finds:

(1) That it is undisputed the predecessor in interest of plaintiff Santa Fe Pacific Railroad Company, successor in interest to The Atlantic and Pacific Railroad Company, was the owner in fee simple of the real property hereinafter described prior to the State of Arizona being admitted as a State of the Union by virtue of Patent issued by the United States of America on November 5, 1910, recorded July 3, 1911, in Book 21 of Deeds, pages 484 et seq., records of Mohave County, Arizona Territory, pursuant to the Act of Congress approved July 27, 1866, entitled: An Act Granting Lands to Aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast (14 Stat. 292), the lands in Township 19 North, Range 22 West, described therein being in accordance with the Official Plat of Survey approved and filed in the United States Department of the Interior Surveyor General's Office, Phoenix, Arizona, on June 29, 1906, attached as Exhibit B to the Agreed Statement of Facts and Issues on file herein. [2]

(2) That through mesne conveyances title vested in plaintiff by virtue of warranty deed dated August 12, 1955, recorded in Book 82 of Deeds, pages 246-247, records of Mohave County, Arizona, and therefore plaintiff is now the owner in fee simple of the real property hereinafter

described, free and clear of any right, estate, title or interest of the defendants, and each and all of them.

(3) That according to the aforesaid Official Plat of Survey approved and filed June 29, 1906, the Colorado River did not pass through any portion of the lands hereinafter described nor border thereon but since said time the Colorado River has moved eastward to various and different points and parcels of said land until its channel was stabilized in 1960 by rechannelization construction work conducted by the Department of the Interior through its Bureau of Reclamation where its stabilized man-made channel now crosses over the westerly portion of the lands hereinafter described and which man-made channel has been declared by Compact of the States of Nevada and Arizona approved by Congress June 16, 1961, Public Law 87-50, Eighty-seventh Congress, First Session (75 Stat. 93) to be the boundary between the States of Nevada and Arizona.

(4) That the Agreed Statement of Facts and Issues do not establish the dates, degree and manner of movement of the Colorado River, but such issues are immaterial in determination of the rights of the parties in this action.

It Is Therefore Ordered, Adjudged and Decreed that plaintiff Bonelli Cattle Company, a California corporation, is the owner in fee simple of and is entitled to the possession, use and enjoyment of the following described real property situate in Mohave County, State of Arizona: [3]

> Lot One (1); the South Half of the Northeast Quarter (S½NE¼) and the Southeast Quarter (SE¼) of Section Three (3), Township Nineteen (19) North, Range Twenty-two (22) West of the Gila and Salt River Base and Meridian.

It Is Further Ordered, Adjudged and Decreed that the defendants, the State of Arizona, the State Land Depart-

ment, a Department of the State of Arizona, and Obed M. Lassen, State Land Commissioner of the State of Arizona, and each and all of them, have no right, title, interest, claim or estate whatsoever in and to the above-described real property or any part thereof, and that said defendants and all persons or legal entities claiming under them, or any of them, are hereby barred from claiming or asserting any claim, estate, right, title or interest in or to said real property, or any part thereof, adverse to plaintiff Bonelli Cattle Company, and said defendants, and each of them, are hereby perpetually enjoined and restrained from interfering with plaintiff's right to the possession, use and enjoyment thereof.

It Is Further Ordered, Adjudged and Decreed that each party shall bear their own costs in this action incurred.

Done, Settled and Approved in open Court this 17th day of July, 1967.

/s/ T. J. MAHONEY
T. J. Mahoney, Judge

Receipt of a copy of the foregoing Judgment and Decree is hereby acknowledged and the same is approved as to form.

Dated: July 14th, 1967.

DARRELL F. SMITH
The Attorney General
DALE R. SHUMWAY
Assistant Attorney General
By /s/ DALE R. SHUMWAY
Dale R. Shumway [4]

(Recorded July 28, 1967, in Book 110 of Dockets, pages 228-232, Records of Mohave County, Arizona, and August 21, 1967, Instrument No. 656358, Official Record Book No. 817, records of Clark County, Nevada) [5]

In the Superior Court of the State of Arizona
in and for the County of Mohave

(Title omitted in printing)

NOTICE OF APPEAL

(Filed September 15, 1967)

Comes Now the defendants and appeal to the *Supreme Court, State of Arizona* from the Judgment and Decree of the Superior Court of Mohave County, Arizona, made and entered on the 17th day of July, 1967, in which said Court granted a Judgment and Decree in favor of the plaintiff.

Dated this 14th day of September, 1967

DARRELL F. SMITH
The Attorney General

By /s/ DALE R. SHUMWAY
Dale R. Shumway
Special Assistant Attorney General
Attorney for the Defendants

Supreme Court of the State of Arizona

No. 9115 (Supreme Court)
No. 5631 (Mohave County)

The State of Arizona, The State Land Department and Obed M. Lassen, State Land Commissioner, Appellants (Defendants),

v.

Bonelli Cattle Company, a California corporation, Appellee (Plaintiff).

October 26, 1967

The following action was taken by the Supreme Court of the State of Arizona on October 24, 1967, in regard to the above-entitled cause:

"Order: Petition for direct appeal to Supreme Court —Denied.

"Further Order: This appeal transferred to Court of Appeals, Division 1, Phoenix, Arizona."

SYLVIA HAWKINSON, Clerk
LUCILLE BROOKS, Assistant Clerk

In the Court of Appeals, State of Arizona

Division One

The State of Arizona, The State Land Department, a Department of the State of Arizona; OBED M. LASSEN, State Land Commissioner of the State of Arizona, Appellants,

v.

Bonelli Cattle Company, a California corporation, Appellee.

No. 1 CA-CIV 734, DEPARTMENT A—Arizona Supreme Court Number 9115 (this matter was filed in the Arizona Supreme Court and transferred to this Court by order of the Supreme Court.)

(Filed February 16, 1970)

Appeal from the Superior Court of Mohave County

Cause Number 5631

Honorable T. J. Mahoney, Judge

AFFIRMED

Gary K. Nelson, The Attorney General — **Phoenix**
By Dale R. Shumway
Special Assistant Attorney General
Attorneys for Appellants

Elmer C. Coker — **Phoenix**
Attorney for Appellee

Cameron, Judge

This is an appeal by the defendant, State Land Department, from a judgment in favor of the plaintiff, Bonelli Cattle Company, which quieted title to certain land [1] situated along the Colorado River in Mohave County, Arizona.

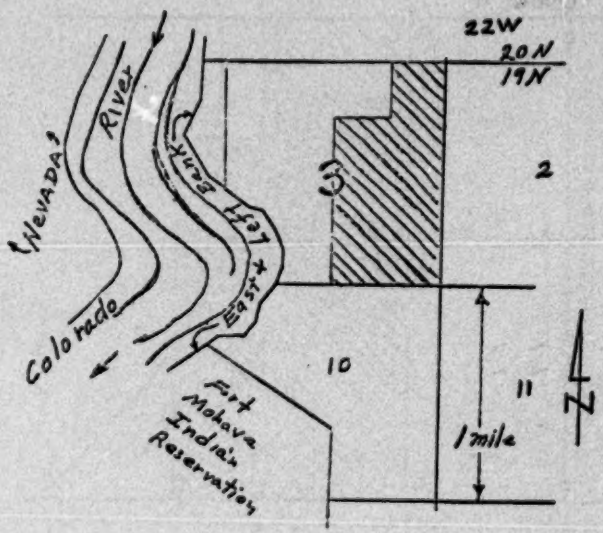
We are called upon to answer the following questions:

1. Did the State of Arizona obtain title to the bed of the Colorado River when admitted to the Union by virtue of the "equal footing" doctrine?
2. Did the trial court err in not determining whether the river had moved by avulsion or accretion in making its decision?
3. When a navigable river is rechanneled by third parties and the former river bed is exposed by the removal of the water therefrom, who has title to the land thus exposed?

The matter was tried upon an agreed statement of facts which may be summarized as follows:

1. When originally surveyed in 1905-1906, the active flow channel of the Colorado River was entirely to the west of the subject land and did not in any way encroach upon said land. See Exhibit "B" below. [2]

Sec. 3 – 19N, 22W
Subject Land in Relation to
1906 River Channel



Subject Land —
1906 General Land Office Survey

Fig. 2. Exhibit B

2. In 1910, the United States conveyed the subject land to the plaintiff's predecessor in interest, the Santa Fe Pacific Railroad Company and the plaintiff is the record owner in fee simple of the lands involved in the action.

3. Since the original survey and conveyance of the subject land, the Colorado River has moved eastward, and has in the past covered much, if not all of, the subject land; that immediately prior to 1959, the active flow channel of the river occupied most of the subject land. See Exhibit "E-1" below.

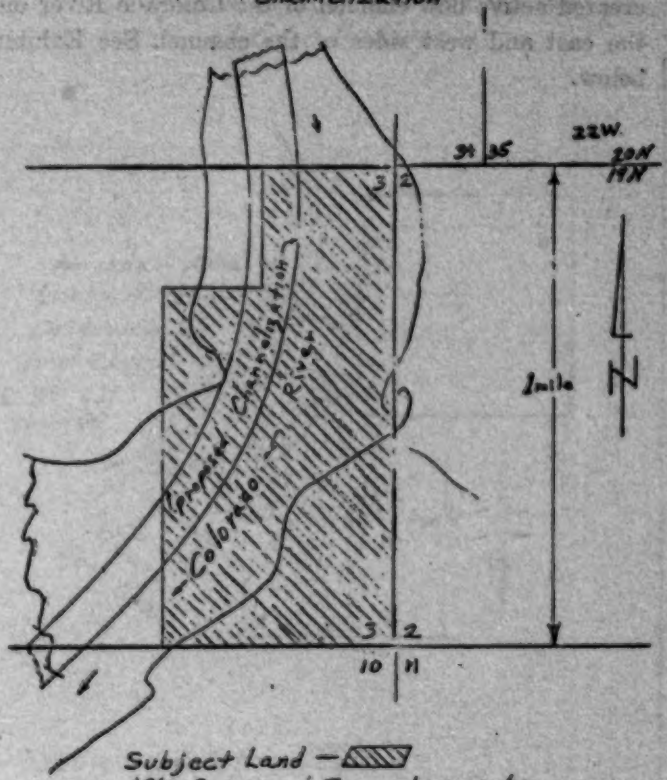


Fig. 3. Exhibit E-1

4. In 1959, the Bureau of Reclamation rechanneled the Colorado River in the area of the subject land resulting in the active flow channel of the Colorado River being restricted to occupy only a portion of the subject land; that today part of the subject land lies outside of the artificially created active flow channel of the Colorado River on both the east and west sides of the channel. See Exhibit "G" below.

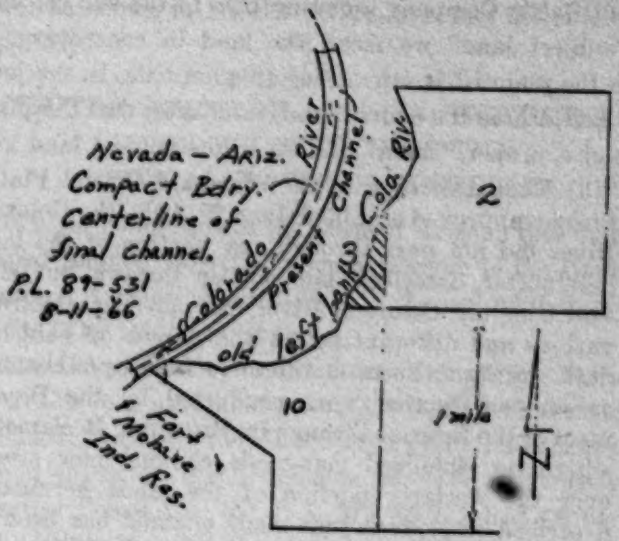


Fig. 4. Exhibit G.

5. At statehood (14 February 1912) the boundary between Arizona and Nevada lay a considerable distance west of the subject land. By virture of the Colorado River Boundary Compact, the boundary now lies down the center of the river as rechanneled by the Bureau of Reclamation in 1959.

After written briefs and oral arguments the trial court signed a judgment and decree in favor of the plaintiff, Bonelli Cattle Company, quieting title to the subject land. By "subject land" we mean the land in controversy to which the plaintiff is attempting to quiet title. In the judgment and decree the court found, *inter alia*, that the plaintiff had a proper "chain" of title to the subject land and:

> "(3) That according to the aforesaid Official Plat of Survey approved and filed June 29, 1906, the Colorado River did not pass through any portion of the lands hereinafter described nor border thereon but since said time the Colorado River has moved eastward to various and different points and parcels of said land until its channel was stablized in 1960 by rechannelization construction work conducted by the Department of the Interior through its Bureau of Reclamation where its stabilized man-made channel now crosses over the westerly portion of the lands hereinafter described and which man-made channel has been declared by Compact of the States of Nevada and Arizona approved by Congress June 16, 1961, Public Law 87-50, Eighty-seventh Congress, First Session (75 Stat. 93) to be the boundary between the States of Nevada and Arizona.
>
> "(4) That the AGREED STATEMENT OF FACTS AND ISSUES do not establish the dates, degree and manner of movement of the Colorado River, but such issues are immaterial in determination of the rights of the parties in this action.
>
> "IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff BONELLI CATTLE

COMPANY, a California corporation, is the owner in fee simple of and is entitled to the possession, use and enjoyment of the following described real property situate in Mohave County, State of Arizona * * *."[6]

From this judgment defendant State Land Department appeals claiming title to the property between the property of plaintiff that remained after the eastward movement of the river as shown in Exhibit "G", supra, and the river as rechanneled.

DOES THE STATE OF ARIZONA OWN THE RIVER BED BY VIRTUE OF THE "EQUAL FOOTING" DOCTRINE?

It is the contention of the State of Arizona that under the "equal footing" doctrine, upon admission to the Union, the State of Arizona obtained title to the bed of the Colorado River. With this we must agree.

The Colorado River as it flows through this section of its reach is a navigable river, Arizona vs California, 283 U.S. 423, 75 L.Ed. 1154, 51 S.Ct. 522 (1931), and once determined to be navigable remains so. U.S. vs Appalachian Electric Power Co., 311 U.S. 377, 85 L.Ed.2d 43, 61 S.Ct. 291 (1940). See also Boulder Canyon Project Act, Ch. 42, 45 Stat. 1057 (1928), 43 U.S.C., Sec. 617, et seq. (1953).

In Pollard's Lessee vs Hagen, 44 U.S. (3 Howard) 212, 11 L.Ed. 565 (1845), the court held that the Constitution did not pass title of the beds of navigable waters to the United States, but reserved title to the several states. Because new states entered the Union on an *equal footing* with all the other states, title to the beds underlying navigable waters passes to the new states upon admission. Mumford vs Wardwell, 73 U.S. (6 Wall.) 423, 18 L.Ed. 756 (1867), Weber vs Board of Harbor Commissioners, 85 U.S. (18 Wall.) 57, 21 L.Ed. 798 (1873), Shively vs Bowlby, 152

U.S. 1, 38 L.Ed. 331, 14 S.Ct. 548 (1893), Martin, et al. vs Waddell, 41 U.S. (16 Peters') 367, 410 L.Ed. 997 (1842), Hardin vs Jordan, 140 U.S. 371, 35 L.Ed. 428, 11 S.Ct. 808 [7] (1891), Kansas vs Colorado, 206 U.S. 46, 51 L.Ed. 956, 27 S.Ct. 655 (1906), Tyson vs State of Iowa, 8th Cir., 283 F.2d 802 (1960).

In addition, Congress recognized in Joint Res. No. 8, 21 August 1911, 37 U.S. Stat. 39, that Arizona was admitted on "equal footing" with the other states of the Union:

> *"Joint Resolution To admit the Territories of New Mexico and Arizona as States into the Union upon an equal footing with the original States.*
>
> *"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Territories of New Mexico and Arizona are hereby admitted into the Union *upon an equal footing* with the original States, in accordance with the terms of an Act entitled 'An Act to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona to form a constitution and State government and be admitted into the Union *on an equal footing* with the original States' commonly called the enabling Act approved June Twentieth, nineteen hundred and ten, and upon the terms and conditions hereinafter set forth. * * *." (emphasis ours)

The Arizona Supreme Court has recently stated in construing the title to the bed of the Colorado River:

> "We therefore hold that the State of Arizona holds *title* and *control* over the submerged land and navigable waters where the accident occurred." Morgan vs Colorado River Indian Tribe, 103 Ariz. 425, 427, 443 Pac.2d 421 (1968).

See also Cherokee Nation vs Oklahoma, 402 F.2d 739 (1968).

We therefore hold that under the "equal footing" doctrine

the State of Arizona obtained title to the river bed of the Colorado River as it existed in 1912 and at the location of the river in the instant case.[8]

WAS THE TRIAL COURT REQUIRED TO FIND WHETHER THE RIVER MOVED BY ACCRETION OR AVULSION?

The only conclusion that can be drawn from the agreed statement of facts and the attached maps and photographs in evidence is that sometime between the making of the original survey in 1905 and 1906 and 24 April 1938, the channel of the Colorado River moved in an undetermined manner to a position where the bed of the river ran over and occupied most of the subject land to which the plaintiff claims title. We are not in a position to determine from the record whether this change was accretive or avulsive nor do we believe the record was sufficient to enable the trial court to so determine.

It is contended by the appellant, State of Arizona, that before the trial court could determine the matter it was required to make a finding of fact whether the river had moved to and over plaintiff's land by accretion or avulsion. Appellant points out the general rule that where a change occurs in the location of the river through a process of erosion or accretion which is a natural and gradual movement of the river, the State would gain title to the bed of the river as it slowly moved losing title to the land that the river has abandoned. The owners of the bank would also lose or gain as the case may be during this slow, imperceptible process. We agree that this is the generally accepted law in regard to accretion in Arizona. Arizona vs Gunther & Shirley Company, 5 Ariz.App. 77, 83, 423 Pac.2d 352 (1967) (review denied 21 March 1967), State vs Jacobs, 93 Ariz. 336, 380 Pac.2d 998 (1963).

The State admits that as to avulsive changes neither the State as owner of the river bed nor the parties riparian [9] thereto lose or gain any interest or title to the land as changed. The general law in this regard is summarized in 65 C.J.S., Navigable Waters, § 86 (b) (1966):

> "Ordinarily an avulsion does not divest the title to lands covered, or uncovered, or shifted by the action of the stream, provided the former boundary can be determined or the land reclaimed within a reasonable time; nor does it confer title to lands uncovered by the water. If the land afterward reappears, the riparian owner retains his title thereto, provided the identity of the land can be established, although it has been held that, where land is obliterated by an avulsion, the owner loses title thereto. Further, a riparian owner may reclaim lands submerged by an avulsion either by natural or by artificial means. It has been held that, in applying the law of avulsion, it is immaterial whether a stream is navigable or non-navigable, since the same principles apply to each."

There is admittedly a minority view in this regard which holds that as to a navigable river the State acquires the title to the new bed, loses title to the old bed, with the abutting landowners acquiring title to the old bed. Manry vs Robison, 122 Tex. 213, 56 S.W.2d 438 (1932), Seabrook Land Company vs Lipscomb (Tex.), 331 S.W.2d 429 (1960), Maufrais vs State, 142 Tex. 559, 180 S.W.2d 144 (1944). This follows logically the view that the bed of a navigable river should be in the State in order to avoid any interference in the exercise of the State's sovereignty over the river:

> "The doctrine is well established that one of the incidents of sovereignty is control of navigable waters and ownership of land thereunder." 3 American Law of Property, § 12.27b (A. J. Casner ed. 1952)

But even if we were to adopt the majority view, we [10] do not believe that the trial court was required to make a determination of the matter of movement for the reason that where the facts are insufficient to establish the manner in which a navigable river has moved there is a presumption that such movement was by accretion rather than by avulsion. Nebraska vs Iowa, 143 U.S. 359, 36 L.Ed. 186, 12 S.Ct. 396 (1892), County of St. Clair vs Lovingston, 90 U.S. (23 Wall.) 46, 23 L.Ed. 59 (1874), Kitteridge vs Ritter, 172 Iowa 55, 151 N.W. 1097 (1915). This presumption is based in logic in that an avulsive change is usually an event of such magnitude that it is normally noted, if not by the riparian landowner, at least by persons in the vicinity and testimony is therefore easy to obtain as to the fact of the avulsive change. The fact that no evidence is available to indicate the manner of movement is in itself an indication that the movement was slow and imperceptible and therefore accretive rather than avulsive.

We therefore hold that there being a presumption that the movement was accretive there is a presumption that the State of Arizona owned the bed of the river as it had moved to and upon plaintiff's property.

WHAT WERE THE RIGHTS OF THE PARTIES WHEN THE RIVER WAS RECHANNELED?

The plaintiff was the owner of the land bordering the river before the river was rechanneled and was the riparian owner. Turner vs Schneider, 4 Mich.App. 388, 144 N.W.2d 848 (1966). The question before the Court is whether the State can claim title to the area between the river and petitioner's land after rechanneling. The law is well settled that in determining this question state law applies. Shively vs Bowlby, 152 U.S. 1, 38 L.Ed. 331, 14 S.Ct. 548 (1894). [11]

Although Arizona rejects absolutely the riparian doctrine as to use of water, Brasher vs Gibson, 101 Ariz. 326, 419 Pac.2d 505 (1966), riparian rights are recognized as far as land title is concerned, State of Arizona vs Gunther & Shirley Company, supra. One of the rights of a riparian landowner is access to the water, and to allow the state to retain title to the intervening property would allow the State to terminate this very valuable right. Colberg, Inc. vs State, 62 Cal.Rptr. 401, 432 Pac.2d 3 (1967). Two theories have been advanced to cover this situation. The first is called the "artificial accretion" doctrine. It has been stated:

> "• • • [T]here are authorities broadly according an upland owner the right to accretions resulting from artificial causes, or holding that the riparian owner is entitled to accretions when caused or aided by artificial conditions created by third persons in which he has no part." 65 C.J.S., Navigable Waters, § 82(2) (1966).

And:

> "• • • The court divided accretion or accession into three classes: (a) Accession made either by a retreating of the river or by the insensible addition of alluvion; (b) Accession made by the 'instantaneous casting up of the bed of the stream' above the water-level and against the upland, and (c) Accretions to the upland made by a stranger 'without the authority of government,' immediately contiguous to the upland so as to exclude the water from contact with the upland, and thus (unless these accretions belong to the uplands) deprive the owner of the upland of the opportunity to have the alluvial accretions. Accessions under group (a) would be the property of the upland owner. Accessions under group (b) would be the property of the owner of the bed of the stream, here the State of Alabama. Accessions under group (c) [12] would inure to the benefit of the riparian owner. • • •" State vs Gill, 259 Ala. 177, 180, 66 S.2d 141 (1953). See also

Esso Standard Oil Company vs Jones, 233 La. 915, 98 S.2d 236 (1957).

The doctrine of re-emergence has also been urged in cases of this kind:

"As an alternative theory of recovery, appellants raised a title claim under the doctrine of re-emergence. That doctrine rests upon 'easy identification' of riparian land 'lost' and 'found' again by re-emergence from the stream bed. These elements are not here present.

"We agree with the government:

'* * * In order for the doctrine to be applied in those states that recognize it, two things must occur; First, the water-course must move across and submerge riparian land so that land formerly non-riparian is made riparian; then the water-course must return to or near its original bed so that the riparian land that had been submerged is uncovered, or re-emerges.

* * * * *

'The United States' land to which the tract has accreted was riparian originally and one of the reasons for the doctrine of accretion is to allow that land to remain riparian. Philadelphia Co. v. Stimson, 223 U.S. 605, 624 [32 S.Ct. 340, 56 L.Ed. 570] (1912). * * *'."

Beaver vs United States, 350 F.2d 4, 11 (1965).

If the removal of the water from the land was by the process of reliction, which is gradual and analogous to accretion, the theory of artificial accretion would apply. If the water was suddenly removed by a man-made avulsion then the doctrine of re-emergence would apply. In either event we feel that the State may not take advantage of this man-made rechanneling to extinguish plaintiff's riparian land rights along this navigable river and deny plaintiff [13] title to the land previously owned.

Nothing we say herein should be construed to affect title to land west of the boundary in the State of Nevada or land along non-navigable streams.

Judgment affirmed.

James Duke Cameron, Judge. Concurring: Francis J. Donofrio, Presiding Judge, Department A, Henry S. Stevens, Judge. (Reported 11 Ariz. App. 412, 464 P. 2d 999.) [14]

In the Court of Appeals, State of Arizona

Division One

(Title Omitted in Printing)

MOTION FOR REHEARING

(Filed March 3, 1970)

Comes now the State of Arizona and the State Land Department, and respectfully moves this Court under Rule 47(a) of the Rules of the Supreme Court for rehearing of the Court's decision dated February 16, 1970, upon the following grounds:

I.

The decision of the Court is in direct conflict with the law relating to ownership of the bed of a navigable stream, as set forth in the cases cited by the Court at pages 7 and 8 of the decision.

II.

The Court correctly held that the State of Arizona under the "equal footing" doctrine obtained title to the river bed of the Colorado River as it existed in 1912 and at the location of the river in the instant case and that the legal presumption is applicable to find that the movement of the Colorado River prior to 1960 was by the natural process of accretion. The Court however erred in its holding regarding the effect of [1] the man-made changes subsequent to 1960 upon the state's title to the stream bed.

III.

The Court erred in hold: (1) that the man-made changes in the stream bed brought about by rechannelization of the Colorado River were the result of artificial accretion; and (2) that the sudden removal of the water from the bed of

the stream previously owned by the State of Arizona brought to bear the doctrine of re-emergence.

(Argument omitted)

Respectfully submitted,

GARY K. NELSON,
The Attorney General

/s/ DALE R. SHUMWAY
Dale R. Shumway
Special Assistant Attorney General
159 State Capitol Building
Phoenix, Arizona 85007
Attorneys for the Appellants [2]

In the Court of Appeals, State of Arizona

Division One

(Title Omitted in Printing)

ORDER

(Filed April 20, 1970)

The motion of the appellants for a rehearing and the response of the appellee together with the appellee's request for oral argument have been considered by the Court.

It Is Ordered denying the request for oral argument.

It Is Further Ordered denying the motion for rehearing.

FRANCIS J. DONOFRIO
Presiding Judge, Department A

In the Court of Appeals, State of Arizona

Division One

(Title Omitted in Printing)

PETITION FOR REVIEW

(Filed April 23, 1970)

Comes Now the State of Arizona, by and through its attorneys Gary K. Nelson, the Attorney General, and Dale R. Shumway, Special Assistant Attorney General and petitions for a review of this case by the Supreme Court of Arizona.

Dated: This 22nd day of April, 1970.

GARY K. NELSON
The Attorney General

By /s/ DALE R. SHUMWAY
Dale R. Shumway
Special Assistant Attorney General
189 State Capitol Building
Phoenix, Arizona 85007
Attorneys for Appellants

Supreme Court of the State of Arizona

No. 10030-PR (Supreme Court)
No. 1 CA-CIV 734 (Court of Appeals)
No. 5631 (Mohave County)

The State of Arizona, the State Land Department, a Department of the State of Arizona; Obed M. Lassen, State Land Commissioner of the State of Arizona, *Appellants*,

V.

Bonelli Cattle Company, a California corporation, *Appellee*.

May 13, 1970

The following action was taken by the Supreme Court of the State of Arizona on May 12, 1970, in regard to the above-entitled cause:

"Ordered: Petition for Review—DENIED."

Record returned to the Court of Appeals, Division One, this 13th day of May, 1970.

SYLVIA HAWKINSON, Clerk
MARY ANN HOPKINS, Deputy Clerk

In the Court of Appeals, State of Arizona

Division One

The State of Arizona, the State Land Department, a Department of the State of Arizona; Obed M. Lassen, State Land Commissioner of the State of Arizona, *Appellants*,

V.

Bonnelli Cattle Company, a California corporation, *Appellee*.

No. 1 CA-CIV 734, Department A—Arizona
Supreme Court Number 9115

MANDATE

(Filed May 15, 1970)

To: The Honorable Superior Court for Mohave County, Arizona, in relation to Cause No. 5631.

GREETINGS:

The above cause was presented in your Court and was brought before Division One of the Court of Appeals of the State of Arizona in the manner prescribed by law. This Court rendered its opinion and caused the same to be filed on the 16th day of February, 1970.

A petition for review was filed. The record was forwarded to the Arizona Supreme Court. By order dated the 12th day of May, 1970, the Arizona Supreme Court denied the petition for review, Supreme Court No. 10030-PR.

Now, Therefore, You Are Commanded that such proceedings be had in said cause as shall be required to comply with the opinion of this Court, a copy of the opinion being attached hereto.

Witness, the Honorable Francis J. Donofrio, Presiding Judge, Department A, Division One of the Court of Appeals of the State of Arizona, this 15th day of May, 1970.

(SEAL)

CLASSIE GANTT, Clerk

By _____

/s/ GLENNA L. DENTON
Deputy Clerk

Supreme Court of the State of Arizona

No. 10030-PR (Supreme Court)
No. 1 CA-CIV 734 (Court of Appeals)
No. 5631 (Mohave County)

The State of Arizona, the State Land Department, a Department of the State of Arizona; Obed M. Lassen, State Land Commissioner of the State of Arizona, *Appellants*,

V.

Bonelli Cattle Company, a California corporation, *Appellee*.

MOTION FOR RECONSIDERATION OF MOTION FOR REHEARING

(Filed May 26, 1970)

Come Now the State of Arizona and The State Land Department and respectfully moves this Court for reconsideration of this Court's Order denying the Petition for Review heretofore filed with the Court and for review of the decision heretofore rendered in this matter by Division One of the Court of Appeals.

Dated: This 26th day of May, 1970.

GARY K. NELSON
The Attorney General

By /s/ DALE R. SHUMWAY
Dale R. Shumway
Special Assistant Attorney General
159 State Capitol Building
Phoenix, Arizona 85007
Attorneys for Appellants

(Memorandum of Law omitted)

Supreme Court of the State of Arizona

(Title Omitted in Printing)

RESPONSE TO APPELLANTS' MOTION FOR RECONSIDERATION

(Filed May 28, 1970)

The Appellants by and through the Attorney General have filed in this Court a Motion for Reconsideration of its Order of May 12 denying Appellants' Petition for Review of the decision of Division One of the Court of Appeals dated February 16, 1970, and reported in 464 P. 2d 999.

The undersigned as the attorney for Appellee who has practised before this Court since 1934 and having the greatest respect and admiration for this Court and what it stands for, realizes that this Court in its discretion and under the authority granted to it by the Constitution and statutes has the power and authority to grant and honor such a motion. However, there appears to be a lack of precedent either by decision of this Court or by its Rules duly promulgated to authorize the entertainment of such a motion.

The undersigned agrees with eminent counsel for the Appellants that the question decided by the Honorable T. J. Mahoney, the presiding Judge of the Mohave County Superior Court and Division [1] One of the Court of Appeals is one of great importance not only to the State of Arizona but to its citizens similarly situated, but believes that this question has already been adversely decided against Appellants not only by the Court of Appeals but by this Court in considering Appellants' Petition for Review. It is respectfully submitted that Appellants' Motion is primarily based upon questions of fact and law already fully briefed and argued before the Court of Appeals and in

Appellants' Petition for Rehearing before the Court of Appeals and Appellee's response thereto.

If this Honorable Court should decide that it will entertain the Motion for Reconsideration, it is respectfully requested that Appellee be granted at least thirty days from the date of such Order granting the Motion within which to further answer and respond to Appellants' Memorandum in Support of their Motion.

In the event that Appellants' Motion is granted, Appellee joins with Appellants, due to the importance of this issue, in their Request for Oral Argument.

Respectfully submitted,

ELMER C. COKER
Luhrs-Central Building, Suite J
132 South Central Avenue
Phoenix, Arizona 85004
Attorney for Appellee [2]

Supreme Court of the State of Arizona
(Title omitted in printing)

June 4, 1970

The following action was taken by the Supreme Court of the State of Arizona on June 2, 1970 in regard to the above-entitled cause:

"Ordered: Motion for reconsideration of Petition for Review—Granted.

Further Ordered: Denying request for oral argument.

Further Ordered: Directing the Court of Appeals, Division No. 1, to recall the mandate.

Justice Jesse A. Udall did not participate in the determination of this matter."

SYLVIA HAWKINSON, Clerk

By /s/ LUCILLE BROOKS
Deputy Clerk

In the Court of Appeals, State of Arizona

Division One

The State of Arizona, the State Land Department, a Department of the State of Arizona; Obed M. Lassen, State Land Commissioner of the State of Arizona, *Appellants*,

v.

Bonelli Cattle Company, a California corporation, *Appellee*.

No. 1 CA-CIV 734, Department A

(Supreme Court No. 10030-PR

Mohave County Superior Court No. 5631)

(Filed June 8, 1970)

The Supreme Court of the State of Arizona entered the following order in its Cause No. 10030-PR, June 2, 1970:

"Ordered: Motion for reconsideration of Petition for Review Granted.

Further Ordered: Denying request for oral argument.

Further Ordered: Directing the Court of Appeals, Division 1, to recall the mandate."

Pursuant to the foregoing,

It Is Hereby Ordered recalling the mandate heretofore issued by the Court of Appeals, Division One, Department A;

It Is Further Ordered that the Clerk of the Superior Court for Mohave County, Arizona, return the record on appeal to the Clerk of the Court of Appeals, Division One.

JAMES DUKE CAMERON

Chief Judge

Supreme Court of the State of Arizona

No. 10030-PR (Supreme Court)
No. 1 CA-CIV 734 (Court of Appeals)
No. 5631 (Mohave County)

The State of Arizona, the State Land Department, a Department of the State of Arizona; Obed M. Lassen, State Land Commissioner of the State of Arizona, *Appellants*,

v.

Bonelli Cattle Company, a California corporation, *Appellee*.

June 18, 1970

The following action was taken by the Supreme Court of the State of Arizona on June 16, 1970, in regard to the above-entitled cause:

"Ordered: Submitted."

SYLVIA HAWKINSON, Clerk

By /s/ LUCILLE BROOKS
Deputy Clerk

In the Supreme Court of the State of Arizona

In Banc

The State of Arizona, the State Land Department, a Department of the State of Arizona; Andrew L. Bettwy, State Land Commissioner of the State of Arizona, *Appellants*,

v.

Bonelli Cattle Company, a California corporation, *Appellee*.

No. 10030-PR

(October 4, 1971)

Appeal from the Superior Court of Pinal (sic) County
Honorable T. J. Mahoney, Judge
Reversed with Directions

Opinion of the Court of Appeals, Division One
11 Ariz. App. 412, 464 P. 2d 999
Vacated

This Opinion was printed and is contained in Appendix to Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona, appearing as Appendix A therein, pages 1a through 36a, inclusive, and is reported at 107 Ariz. 465, 489 P. 2d 699.

In the Supreme Court of the State of Arizona
(Title omitted in printing)

MOTION FOR REHEARING
(Filed January 17, 1972)

Comes Now the Appellee and, under Rule 9(a), respectfully moves this Court for a rehearing of the Court's decision rendered October 4, 1971, upon the following grounds:

—I—

That the Court erred in holding that the State's ownership of lands under the Colorado River extends from the center of the stream (Nevada boundary in this instance) to the high-water mark for the reason that the general rule is that the State's title to the bed and shore extends only to the line of the ordinary or mean high-water mark.

—II—

That the decision of the Court violates the principle that the court cannot legislate by judicial fiat, such power being reserved solely in the Legislature and the people through the initiative procedure of our State Constitution or by an amendment to the Constitution [1] itself, particularly when the Legislature is fully aware of the problem and in recent years has been advised by the Attorney General to enact legislation affecting titles along the Colorado River, which it has failed to do.

—III—

That the doctrine of equitable estoppel applies to the State of Arizona in its claim of ownership to the lands along the Colorado River, a navigable stream, particularly in view of the fact that the question herein is not that of preserving public lands since the State of Arizona never

had record title to the lands along the Colorado River, but it is now, for the first time, claiming title to the lands after large sums of money have been invested in the development thereof by record title owners in good faith and in reliance upon their titles, which titles have long been recognized as being valid, thereby barring and estopping the State of Arizona from asserting such claim.

—IV—

That the Court in its decision has apparently failed to realize the full effect and impact of the ruling it has handed down as it affects vested property rights along the banks of the entire area in the State of Arizona where the Colorado River flows, whose source of title was derived from patents issued by the United States of America dating back, in some instances, prior to statehood and which lands as a result of such title have been greatly improved and developed by the record owners involving millions of dollars, which improvements have been financed by lending institutions and title insured by title companies based upon the record title. [2]

—V—

That the decision of the Court constitutes a taking of private property for public use and purposes without just compensation in violation of the State Constitution and the Constitution of the United States of America.

—VI—

That the Court erred in holding as a matter of law that when the United States dredged and channelized the Colorado River for the express purpose of aiding and controlling navigation, flood control and conservation of water for irrigation purposes that the State's title to the ordinary

high-water mark of the old channel in its natural condition acquired through erosion was not affected thereby.

(Preface and Argument omitted)

Respectfully submitted,

ELMER C. COKER
Luhrs-Central Building, Suite J
132 South Central Avenue
Phoenix, Arizona, 85004
Attorney for Appellee [3]

In the Supreme Court of the State of Arizona

(Title omitted in printing)

January 26, 1972

The following action was taken by the Supreme Court of the State of Arizona on January 25, 1972 in regard to the above-mentioned cause:

"Ordered: Granting all petitions filed asking for leave to file Amici Curiae Briefs herein."
(Relative to the Motion for Rehearing)

CLIFFORD H. WARD, Clerk

By /s/ MARY ANN HOPKINS
Deputy Clerk

To:

Burton M. Apker, of Evans, Kitchel & Jenckes, P.C., 363 North First Avenue, Phoenix 85003

Elmer C. Coker, Esq., Luhrs-Central Building, Suite J, Phoenix 85004

Donald D. Paul, Esq., of Woolway, Paul & Magnus, 607 South Hobart Boulevard, Los Angeles, California 90010

Philip A. Edlund, Esq., of Fennemore, Craig, von Ammon & Udall, Suite 900, 411 North Central Avenue, Phoenix 85004

Leonard C. Langford, Mohave County Attorney, Courthouse, Kingman 86401

Dale R. Shumway, Special Assistant Attorney General, 159 State Capitol Building, Phoenix 85007

In the Supreme Court of the State of Arizona

(Title omitted in printing)

OBJECTION TO MOTION FOR REHEARING

(Filed January 31, 1972)

Come Now the appellants, pursuant to Rule 9 (b), and object to the Motion for Rehearing for the reason that all of the legal issues have been presented to the Court and based upon the facts, as agreed to by the parties in the trial Court, the decision of the Court has been entered. No new facts or law are available to the Court upon which to base a different decision if rehearing were granted. We, therefore, respectfully request the Court to deny the Motion for Rehearing.

Dated January 26, 1972.

DALE R. SHUMWAY
Dale R. Shumway
Special Counsel to the Attorney General
Udall, Shumway & Blackhurst
64 E. Broadway, Suite 4
Tempe, Arizona 85282
Attorney for Appellants

(Memorandum omitted)

In the Supreme Court of the State of Arizona

(Title omitted in printing)

(Filed April 13, 1972)

It is ordered: Motion for Rehearing denied.

Dated this 13th day of April, 1972.

/s/ JACK D. H. HAYS
Jack D. H. Hays
Chief Justice

In the Supreme Court of the State of Arizona

In Banc

The State of Arizona, the State Land Department, a Department of the State of Arizona; Andrew L. Bettwy, State Land Commissioner of the State of Arizona, *Appellants*,

v.

Bonelli Cattle Company, a California corporation, *Appellee*.

No. 10030-PR

(April 13, 1972)

Appeal from the Superior Court of Mohave County

Honorable T. J. Mahoney, Judge

SUPPLEMENTAL OPINION

This Opinion was printed and is contained in Appendix to Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona, appearing as Appendix B therein, pages 1b through 10b, inclusive, and is reported at 108 Ariz. 258, 495 P. 2d 1312.

In the Supreme Court of the State of Arizona

No. 10030-PR

MANDATE

(Issued April 13, 1972)

To the Honorable the Superior Court of the State of Arizona in and for the County of Mohave

GREETING:

Whereas, lately in the Superior Court of the State of Arizona in and for the County of Mohave, before you in a cause between

Bonelli Cattle Company, a California corporation,

Plaintiff,

vs.

The State of Arizona, the State Land Department, a Department of the State of Arizona; Obed M. Lassen, State Land Commissioner of the State of Arizona,

Defendants.

Cause No. 5631

said Superior Court entered its Judgment and Decree on the 17th day of July, 1967, in favor of the plaintiff and against the defendants. [1]

as by the inspection of the record of the said Superior Court, which was brought into the Supreme Court of the State of Arizona by virtue of an appeal by defendants, agreeably to the law in such case made and provided fully and at large appears. This case was transferred from the Supreme Court to the Court of Appeals, Division One, on October 26, 1967.

And Whereas, in November, in the year of our Lord one thousand nine hundred and sixty-nine, the said cause came on to be heard before the said Court of Appeals, Division One, and was submitted for decision after argument of counsel.

On Consideration Whereof, it was on the 16th day of February, in the year of our Lord one thousand nine hundred and seventy, ordered by said Court that the judgment of the said Superior Court in this cause, appealed from be, and the same is hereby affirmed.

Whereupon, on April 23, 1970, The State of Arizona filed a Petition for Review by the Supreme Court, on consideration of which the said Supreme Court, on May 12, 1970, ordered that the Petition for Review be denied. On May 26, 1970, a Motion for Reconsideration of Petition for Review was filed by the State of Arizona and the State Land Department, on consideration of which the said Supreme Court, on June 2, 1970, ordered that the Motion be granted and the Petition for Review be submitted for decision. It was on the 4th day of October, 1971, ordered by this Court that the opinion of the Court of Appeals, Division One, be vacated, and the judgment of the Superior Court be reversed with directions to enter judgment quieting title in the State of Arizona from the Nevada boundary to the high water mark.

On January 17, 1972, a Motion for Rehearing was filed by Bonelli Cattle Company; and on April 13, 1972, the

Supreme Court ordered the Motion for Rehearing denied. It was on the 13th day of April, 1972, that this Court ordered that the decision directing the Superior Court of Mohave County to enter judgment quieting title in the State of Arizona from the Nevada boundary to the high water mark as supplement is approved.

You therefore are hereby commanded that such proceedings be had in said cause, as according to the decision and order of this Court, and as according to right and justice, and to law, ought to be had.

Witness, the Honorable Jack D. H. Hays, Chief Justice of the Supreme Court of the State of Arizona, the Thirteenth day of April, in the year of our Lord one thousand nine hundred and seventy-two.

CLIFFORD H. WARD, Clerk

By .....

Deputy Clerk of the Supreme Court of the State of Arizona

Supreme Court of the United States
Office of the Clerk
Washington, D. C. 20543

January 22, 1973

Elmer C. Coker, Esq.
Luhrs-Central Bldg., Suite J.
132 South Central Avenue
Phoenix, Arizona 85004

RE: BONELLI CATTLE CO. v. ARIZONA
No. 72-397

Dear Mr. Coker:

The Court today took the following action in the above case:

"The petition for a writ of certiorari is granted. Mr. Justice Rehnquist took no part in the consideration or decision of this petition."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of $50, Rule 52(a) is due and payable.

Very truly yours,

MICHAEL RODAK, JR., *Clerk*

By /s/ HELEN K. LOUGHRAN
(Mrs.) Helen K. Loughran
Assistant Clerk